



Rhode Island Democratic State Committee

OAC 9405

RECEIVED

F.E.C.

SECRET

JUL 12

93 JUL 12 AM 9:43

93 JUL 12 PM 3:39

1991 Smith Street
No. Providence, RI 02911
June 22, 1993

Lawrence Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20003

AOR 1993-14

Dear Mr. Noble:

I am writing on behalf of the Rhode Island Democratic State Committee ("State Committee") to request an advisory opinion relating to the operation of the Rhode Island campaign finance laws and its interaction with the Preemption Clause of the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 453. We are in receipt of the attached letter from the Rhode Island Board of Elections ("Board"). In its letter, the Board has concluded that the Federal Account of the State Committee is subject to the prohibitions, limitations and reporting requirements of Rhode Island law. See attached letter at ¶2.

Specifically, Rhode Island law requires that a committee must register before receiving any contributions, and file disclosure reports regularly with the Board, R.I.G.L. 17-25-11, 15. Furthermore, registered political committees are required to contribute to a minimum of five (5) Rhode Island candidates, R.I.G.L. § 17-25-3(j). Finally, Rhode Island political committees may not receive contributions in excess of \$1000 per calendar year from an individual or other political committees.

In the attached letter, the Board asserts that any federally registered multicandidate political committee that wishes to make a contribution to the State Committee Federal Account would be subject to the above registration and reporting requirements of Rhode Island law. Furthermore, the Board asserts that contributions by federally registered multicandidate political committees or individuals to the State Committee's Federal Account are governed by Rhode Island law, rather than federal law (thus limiting such contributions to \$1000 rather than the federal \$5000 limit). See R.I.G.L. § 17-25-10.1(a); 2 U.S.C. §441a(a).

Lawrence Noble, Esq.
June 22, 1993
Page 2

The State Committee Federal Account is a separate, federally registered account, which is used solely in connection with federal elections, and only receives contributions which are in compliance with the prohibitions and limitations of the FECA. The State Committee also maintains a separate, segregated non-federal account for use in connection with Rhode Island elections, and to pay for the non-federal portion of allocable expenses. See 11 C.F.R. § 106.5. This account is currently registered with the Board.

FEC regulations address this issue at 11 C.F.R. § 108.7:

(a) The provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supersede and preempt any provision of State Law with respect to election to Federal office.

(b) Federal Law supersedes State Law concerning the

(1) Organization and registration of political committees supporting Federal candidates;

(2) Disclosure of receipts and expenditures by Federal candidates and political committees; and

(3) Limitation on contributions and expenditures regarding Federal candidates and political committees...

As you know, the FEC has determined on several occasions that the FEC preempts state law when it purports to regulate the federal activities of state party committees that are governed by the FECA. See e.g. AO 1978-50 (allocation of get-out-the vote drives preempted a Michigan statute prohibiting expenditures from more than one account); AO 1978-54 (state reporting requirements for federal candidates are superseded by the FECA); AO 1989-25 (a state statute that restricts a state party from making coordinated expenditures is preempted); AO 1991-5 (a state law prohibiting corporate contributions does not apply to party building funds because state law is preempted).

Based on the foregoing, the State Committee respectfully requests that the FEC issue an advisory opinion to the effect that:

(1) Rhode Island law may not limit contributions to the State Committee Federal Account to \$1000 per calendar year;

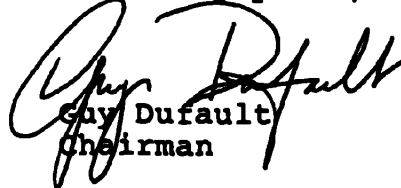
Lawrence Noble, Esq.
June 22, 1993
Page 3

(2) The State Committee Federal Account, or any federally registered political committee that makes a contribution to the Federal Account, is not subject to the registration and reporting requirements of Rhode Island law; and

(3) The State Committee Federal Account, or any federally registered political committee that makes a contribution to the Federal Account, is not required to contribute to a minimum of five Rhode Island candidates.

Your prompt response to this inquiry is greatly appreciated
Thank you for your assistance in this matter.

Sincerely yours,



Guy Dufault
Chairman

cc: Joseph DiStefano
Chairman, Rhode Island Board of Elections



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

BOARD OF ELECTIONS

50 Branch Avenue
Providence, R.I. 02904
401-277-2345

June 8, 1993

Mr. Guy Dufault, Chairman
Rhode Island Democratic State Committee
1991 Smith Street
North Providence, Rhode Island 02911

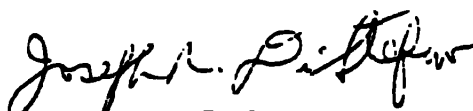
Dear Mr. Dufault:

The Board of Elections is of the opinion that while a federally registered political action committee may make a contribution directly to a federal candidate or such candidate's political committee under the Federal Election Campaign Act of 1971 free of any conflicting provisions of state law, such federally registered political action committee may not make a contribution directly to the Democratic State Committee even though such contribution is to be held in a separate, segregated account to be used only for the support of federal candidates, unless such contribution is made subject to the provisions of Rhode Island law.

We are of the opinion that in the latter case such federally registered political action committee would have to register with the Rhode Island State Board of Elections and would then become subject to all provisions of Rhode Island law including (1) a limitation on the amount that may be contributed to the political action committee by individual donors, and (2) a provision requiring state registered political action committees to contribute to five (5) or more candidates.

It is my understanding that you will present the issue to the Federal Election Commission for their interpretation of the requirements of the Federal Election Campaign Act of 1971 and will provide me with a copy of the response of the Federal Election Commission.

Very truly yours,


Joseph R. DiStefano
Chairman

JRD:jla

CHAPTER 25

RHODE ISLAND CAMPAIGN CONTRIBUTIONS AND EXPENDITURES REPORTING ACT

17-25-1. Short title. - This chapter shall be known and may be cited as "Rhode Island Campaign Contributions and Expenditures Reporting Act".

17-25-2. Declaration of policy. - It is hereby declared to be in the public interest and to be the policy of the state to require the reporting of certain contributions received and expenditures made to aid or promote the nomination, election, or defeat of all candidates for public office.

17-25-3. Definitions. - As used in this chapter unless a different meaning clearly appears from the context:

(a) The term "candidate" means any individual who undertakes any action, whether preliminary or final, which is necessary under the law to qualify for nomination for election, or election to public office, and/or any individual who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any public office, whether or not the specific public office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at that time.

(b) The terms "contributions" and "expenditures" include all transfers of money, paid personal services, or other thing of value to or by any candidate, committee of a political party, or political action committee.

(c) The term "election" means any primary, general or special election or town meeting for any public office of the state, municipality, or district or for the determination of any question submitted to the voters of the state, municipality, or district.

(d) The term "paid personal services" means personal services of every kind and nature, the cost or consideration for which is paid or provided by someone other than the committee or candidate for whom the services are rendered, but shall not include personal services provided without compensation by persons volunteering their time.

(e) The term "testimonial affair" means an affair of any kind or nature including, but not limited to, cocktail parties, breakfasts, luncheons, dinners, dances, picnics, or similar affairs expressly and directly intended to raise campaign funds in behalf of a candidate to be used for nomination or election to a public office in this state, or expressly and directly intended to raise funds in behalf of any state or municipal committee of a political party, or expressly and directly intended to raise funds in behalf of any political action committee, or intended to raise funds for the personal use of any person who holds public office or is a "candidate" for public office as defined in section 17-25-3(a).

(f) The term "other thing of value" means any item of tangible real or personal property, of a fair market value in excess of two hundred dollars (\$200).

(g) The term "state" means state of Rhode Island.

(h) The term "public office" means any state, municipal, school, or district office or other position that is filled by popular election, except political party offices. "Political party offices" shall mean any state, city, town, ward, or representative or

senatorial district committee office of a political party or delegate to a political party convention, or any similar office.

(i) The term "person" means an individual, partnership, committee, association, corporation, and any other organization.

(j) The term "political action committee" means any group of two (2) or more persons which accepts any contributions to be used for advocating the election or defeat of any candidate or candidates or to be used for advocating the approval or rejection of any question or questions submitted to the voters. Only political action committees which have accepted contributions from fifteen (15) or more persons in amounts of ten dollars (\$10.00) or more within an election cycle shall be permitted to make contributions, and said committees must make contributions to at least five (5) or more candidates.

(k) The term "election cycle" means the twenty-four month period commencing on January 1 of odd number years and ending on December 31 of even number years.

17-25-4. Applicability of chapter. - The provisions of this chapter shall apply in any primary, general, or special election or town meeting for any public office of the state, municipality, or district or for the determination of any question submitted to the voters of the state, municipality, or district.

17-25-5. Duties and powers of the board of elections. - (a) The board of elections shall have authority to perform such duties as are necessary to implement the provisions of this chapter. Without limiting the generality of the foregoing, the board is authorized and empowered to:

- (1) Develop forms for the making of the required reports to be filed with the board of elections;
- (2) Prepare and publish a manual for all candidates, political party committees, and political action committees prescribing the requirements of the law, including uniform methods of bookkeeping and reporting and requirements as to the length of time that any person required to keep any record pursuant to the provisions of this chapter shall retain these records, or any class or category thereof, or any other documents;
- (3) Adopt rules and regulations to carry out the purposes of this chapter;
- (4) Prepare and make available for public inspection through the office of the board of elections summaries of all reports grouped according to candidates and political parties;
- (5) Prepare and publish, prior to May 1 or as soon as practicable thereafter of each year, an annual report to the general assembly;
- (6) Ascertain whether candidates or political party committees, or political action committees, have failed to file reports or have filed defective reports; and may for good cause shown extend the dates upon which reports are required to be filed;
- (7) Conduct confidential investigations and/or closed hearings in accordance with this title relative to alleged violations of this chapter either on its own initiative or upon receipt of a verified written complaint, which complaint shall, under pain and penalty of perjury, be based upon actual knowledge and not merely on information and belief. Upon completion of its investigation and/or hearings, if the board has reason to believe that a violation of this chapter has occurred or that a complainant has wilfully sworn or affirmed falsely, the chairman of the board of elections is hereby authorized to, and shall, issue to the person found to be in violation of this chapter a summons pursuant to §12-7-11 to appear before the division of the district court where the person resides and shall be prosecuted by the attorney general. Any action taken by the board as a result of a written verified complaint

shall be completed no later than five (5) days after its receipt and if no violation is found to exist all records and papers shall be kept confidential unless further legal proceedings are instituted.

The confidentiality of an investigation, hearing, and/or findings may be waived in writing only by the person or persons complained of.

(b) The board of elections shall take such steps as may be necessary or appropriate to furnish timely and adequate information, in appropriate printed summaries and in such other form as it may see fit, to every candidate or prospective candidate for public office who becomes or is likely to become subject to the provisions of this chapter, and to every treasurer duly designated under the provisions of this chapter, informing them of their actual or prospective obligations and responsibilities under this chapter.

(c) The board of elections is authorized upon written request to render written advisory opinions as to whether a given set of facts and circumstances set forth in the request would constitute a violation of any of the provisions of this chapter, or whether a given set of facts and circumstances set forth in the request would render any person subject to any of the reporting requirements of this chapter provided that the requirement for a written opinion may be voluntarily waived by the candidate or committee.

Unless an extension of time is consented to by any person who submits a written request for an advisory opinion, the board of elections shall render its written advisory opinion within five (5) days of receipt of the request therefor.

17-25-5.1. Manual of Legal Requirements. - The board of elections shall prepare and publish a manual prescribing the requirements of the law and the secretary of state shall have copies of the manual available for individuals filing candidacy papers.

17-25-6. [Repealed.]

17-25-7. Contents of reports to be filed by treasurers of candidates and committees. -

(a) Each campaign treasurer of a candidate, each state and municipal committee of a political party, and each political action committee shall keep accurate records and make a full report, upon a form prescribed by the board of elections, of all contributions received by it in excess of a total of two hundred dollars (\$200) from any one source within a calendar year, in furtherance of the nomination, election, or defeat of any candidate or the approval or rejection of any question submitted to the voters during the period from the date of the last report, or in the case of the initial report, beginning on the date of the appointment of the campaign treasurer for state and municipal committees and political action committees and on the date a person becomes a "candidate" as defined in §17-25-3(a) for individual candidates. The report shall contain the name and address of each person from whom the contributions in excess of two hundred dollars (\$200) were received, and the amount contributed by each person. The report shall be filed with the board of elections on the dates designated in §17-25-11. The campaign treasurer of the candidate, or committee reporting, shall certify to the correctness of each report.

(b) Each state and municipal committee of a political party shall also file with the board of elections, not later than March 1 of each year, an annual report setting forth in the aggregate all contributions received and all expenditures made during the previous calendar year, whether or not these expenditures were made, incurred, or authorized in furtherance of the election or defeat of any candidate. The treasurer of the committee or organization reporting shall certify to the correctness of each report.

(c) Any report filed pursuant to the provisions of this section shall include the net proceeds realized from any "testimonial affair" as defined in §17-25-3 held since the date of the most recent report

filed, and shall include the names and addresses of each contributor in excess of two hundred dollars (\$200) to the testimonial affair and the amount contributed by each.

(d) Nothing contained in this section shall be construed to require a candidate, state or municipal party committee, political action committee, or campaign treasurer to maintain any records of contributions which do not exceed twenty-five dollars (\$25.00).

(e) No state or municipal committee of a political party shall be required to file reports pursuant to this section of contributions received or expenditures made in behalf of any candidate who is not required to file reports pursuant to §17-25-11 because the aggregate amount expended in behalf of the candidate's candidacy did not exceed five thousand dollars (\$5,000) and no contribution was received in excess of a total of two hundred dollars (\$200) from any one source within a calendar year.

17-25-7.1. Report of testimonial proceeds intended for personal use. - (a) Within ninety (90) days from the date of a testimonial affair which was intended to raise funds for the personal use of a person who holds public office or is a candidate for public office, the person or a duly authorized designee shall make a full report to the board of elections, upon a form to be prescribed by the board, setting forth the net proceeds realized from the testimonial affair and the names and addresses of each contributor in excess of one hundred dollars (\$100) to the affair and the amount contributed by each. The person making the report shall certify to its correctness.

(b) The public office-holder or candidate shall be responsible for maintaining accurate financial records of the testimonial affair and for filing the aforementioned report unless he or she files with the board of elections, prior to the affair, a statement designating another person whose responsibility it will be to maintain the records and to file the report.

17-25-8. Appointment of campaign treasurer by candidate. -

Filings. - (a) Each candidate in an election shall appoint one (1) campaign treasurer before receiving any contribution or expending any money in furtherance or aid of the candidate's candidacy. The designation of the campaign treasurer shall be made by the candidate's filing the name and address of the campaign treasurer with the board of elections.

(b) A campaign treasurer of the candidate may appoint deputy campaign treasurers as required. The candidate shall file the names and addresses of deputy campaign treasurers with the board of elections.

(c) A candidate may remove a campaign treasurer or deputy campaign treasurer. In the case of the death, resignation, or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and shall file his or her name and address with the board of elections within ten (10) days. A candidate may serve as his or her own campaign treasurer, and upon failure to designate a treasurer, the candidate shall be designated his or her own treasurer by the board of elections.

17-25-8.1. Appointment of treasurer by political action committee - Filings. - (a) Each political action committee shall appoint one (1) campaign treasurer before receiving any contribution or expending any money for the purpose of advocating the election or defeat of any candidate or the approval or rejection of any question.

(b) A campaign treasurer of a political action committee may appoint deputy campaign treasurers as may be required. The committees shall file the names and addresses of the deputy campaign treasurers with the board of elections.

(c) Any political action committee may remove at any time its campaign treasurer. In the case of the death, resignation, or removal of its campaign treasurer, any committee shall appoint a successor

as soon as practicable and shall file his or her name and address with the board of elections within ten (10) days.

17-25-9. Designation of campaign treasurer of political party committees. Filings. -

(a) Each state and municipal committee of a political party shall, on or before January 31 in each year, designate a campaign treasurer and shall file the name and address thereof with the board of elections.

(b) A campaign treasurer of the state or municipal committee of a political party may appoint deputy campaign treasurers as may be required. The committees shall file the names and addresses of the deputy campaign treasurers with the board of elections.

(c) Any state or municipal committee of a political party may remove at any time its campaign treasurer. In the case of the death, resignation, or removal of its campaign treasurer, any committee shall appoint a successor as soon as practicable and file his or her name and address with the board of elections within ten (10) days.

17-25-10. Lawful methods of contributing to support of candidates - Reporting - Disposition of anonymous contributions. - (a) No contribution shall be made or received, and no expenditures shall be directly made or incurred, to support or defeat a candidate or to advocate the approval or rejection of any question in any election except through:

(1) The duly appointed campaign treasurer, or deputy campaign treasurers, of the candidates;

(2) The duly appointed campaign treasurer, or deputy campaign treasurers of a political party committee;

(3) The duly appointed campaign treasurer or deputy campaign treasurer of a political action committee.

(b) It shall be lawful, however, for any person, not acting in concert with any other person or group, to expend personally from that person's own funds a sum which is not to be repaid to him or her for any purpose not prohibited by law to support or defeat a candidate or to advocate the approval or rejection of any question; provided, however, that any person making the expenditure shall be required to report all his or her expenditures and expenses, if the total of the money so expended exceeds two hundred dollars (\$200) within a calendar year, to the campaign treasurer of the candidate, or political party committee, on whose behalf the expenditure or contribution was made, or to his or her deputy, who shall cause the expenditures and expenses to be included in his or her report subject to the provisions of §§17-25-7 and 17-25-8.

(c) Any anonymous contribution received by a campaign treasurer or deputy campaign treasurer shall not be used or expended, but shall be returned to the donor, if the donor's identity can be ascertained; if not, the contribution shall escheat to the state.

17-25-10.1. Political Contributions — Limitations.—

(a) No person, other than the candidate to his or her own campaign, nor any political action committee shall make a contribution or contributions to any candidate as defined by section 17-25-3 which in the aggregate exceed two thousand dollars (\$2,000) within a calendar year, nor shall any candidate accept a contribution or contributions which in the aggregate exceed two thousand dollars (\$2,000) within a calendar year from any one person or political action committee.

(b) Contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on the candidates behalf shall be considered to be contributions made to the candidate.

(c) Expenditures made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, the candidate's authorized political committees, or their agents shall be considered to be a contribution to such candidate.

(d) The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's campaign committees, or their authorized agents shall be considered to be a contribution to a candidate.

(e) Nothing herein shall be construed to restrict political party committees organized pursuant to this title from making contributions to the candidates of that political party.

17-25-11. Dates for filing of reports by treasurers of candidates or of committees. -

(a) During the period between the appointment of the campaign treasurer for state and municipal committees, and political action committees, or in the case of an individual, the date on which the individual becomes a "candidate" as defined in §17-25-3(a), and the election with respect to which contributions are received or expenditures made by him or her in behalf of or in opposition to a candidate or question, the campaign treasurer of a candidate, a political party committee, or a political action committee shall file a report containing an account of contributions received and expenditures made on behalf of or in opposition to a candidate or question: (1) on the twenty-eighth and seventh days next preceding the day of the primary, general, or special election, and (2) a final report on the twenty-eighth day following the election. The report shall contain the name and address of each person from whom contributions in excess of a total of two hundred dollars (\$200) within a calendar year were received, and the amount contributed by each person, and the name and address of each person to whom expenditures in excess of twenty-five dollars (\$25.00) were made, and the amount and purpose of each expenditure.

(b) Concurrent with the report filed on the twenty-eighth day following an election, or at any time thereafter, the campaign treasurer of a candidate, or political party committee or political action committee, may certify to the board of elections that the campaign fund of the candidate, political party committee, or political action committee having been instituted for the purposes of the past election, has completed its business and been dissolved or, in the event that the committee will continue its activities beyond the election, that its business regarding the past election has been completed; and the certification shall be accompanied by a final accounting of the campaign fund, or of the transactions relating to the election, including the final disposition of any balance remaining in the fund at the time of dissolution or the arrangements which have been made for the discharge of any obligations remaining unpaid at the time of dissolution.

(c) Once the campaign treasurer certifies that the campaign fund has completed its business and been dissolved, no contribution which is intended to defray expenditures incurred on behalf of or in opposition to a candidate or to advocate the approval or rejection of any question during the campaign can be accepted. Until such time as the campaign treasurer certifies that the campaign fund has completed its business and been dissolved, the treasurer shall file reports containing an account of contributions received and expenditures made at ninety (90) day intervals commencing one hundred twenty (120) days following the election.

(d) There shall be no obligation to file the reports of expenditures required by this section on behalf of or in opposition to a candidate or question if the total amount to be expended in behalf of the candidacy or question by the candidate, by any political party committee, by any political action committee, or by any person shall not in the aggregate exceed five thousand dollars (\$5,000).

However, even though the aggregate amount expended on behalf of the candidacy does not exceed five thousand dollars (\$5,000), reports must be made listing the source and amounts of all contributions in excess of a total of two hundred dollars (\$200) from any one source within a calendar year.

(e) On or before the first date for filing contribution and expenditure reports, the campaign treasurer may file a sworn statement that the treasurer will accept no contributions nor make aggregate expenditures in excess of the minimum amounts for which a report is required by this chapter. Thereafter, the campaign treasurer shall be excused from filing all the reports for that campaign other than the final report due on the twenty-eighth day following the election.

17-25-12. Prohibited contributions. - No contributions shall be made, and no expenditures shall be made or incurred whether anonymously, in a fictitious name, or by one person or group in the name of another, to support or defeat a candidate in a primary, general, or special election or to advocate the approval or rejection of any question. No treasurer or candidate shall solicit or knowingly accept any contribution contrary to the provisions of this section.

17-25-13. Penalties. - Any person who willfully and knowingly violates the provisions of this chapter shall upon conviction be guilty of a petty misdemeanor and shall be fined not more than five hundred dollars (\$500).

17-25-14. Maintenance of party organization. - Any state or municipal committee of any political party may receive and disburse moneys for the general purposes of maintaining the organization during the whole or any part of the year.

17-25-15. Political action committee - Notice of formation. - (a) No political action committee shall accept any contributions or make any expenditures prior to filing notice of its organization with the board of elections. The notice shall contain:

- (1) the name or names of any candidates whose election or defeat the committee intends to advocate and/or the question or questions whose approval or rejection the committee intends to advocate;
- (2) the names and addresses of all officers of the committee; and
- (3) the mailing address or addresses of the committee.

(b) No committee shall advocate the election or defeat of any candidate or question other than that set forth in its notice of organization or amendment thereto. A political action committee may amend its notice of organization at any time. The board of elections shall prescribe forms in compliance with this section.

17-25-16. Enjoining of illegal acts - Forfeiture of contributions. - Whenever the board of elections shall have reason to believe that a candidate, political party committee, or political action committee, or the campaign treasurer or deputy campaign treasurer thereof, has accepted a contribution or made an expenditure in violation of the provisions of this chapter, or willfully and knowingly has made a false statement in any of the reports required hereunder or failed to file any report, or has otherwise violated this chapter, the board may, in addition to all other actions authorized by law, request the attorney general to bring an action in the name of the state of Rhode Island in the Superior Court against the person and/or committee to enjoin them from continuing the violation or doing any acts in furtherance thereof and for such other relief as the court deems appropriate. In addition, the court may order the forfeiture of any or all contributions accepted in violation of and/or not reported as required by this chapter. All contributions so forfeited shall become the property of the state.

17-25-17. Severability. - If the provisions of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of

the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable.

17-25-18. Public financing of election campaigns – General purpose. – Whereas, the general assembly hereby finds that the cost of running for statewide office has risen over the last decade at a rate far in excess of the increase in the cost of living; and

Whereas, the general assembly hereby finds that the need to raise ever larger sums of money to effectively compete for governor threatens the essence of our democratic system by excluding many well qualified candidates; and

Whereas, the general assembly hereby finds that the candidate's need to raise large sums of money can result in disproportionate and inappropriate influence being obtained by those who possess the financial ability to make large contributions to campaigns; and

Whereas, the general assembly finds that the state cannot impose limitations on the amount of private funds raised and expended for election purposes by a candidate for governor unless it provides for at least partial public financing of campaigns for the governorship;

Therefore, the general assembly determines that it is in the best interest of the citizens of the state to provide public financing to qualified candidates for governor.

17-25-19. Public financing of election campaign. - Outlined. - To effectuate the purpose stated in section 17-25-18, public funds shall be made available under the terms and conditions of this section and sections 17-25-20 through 17-25-27 to qualifying candidates for governor who agree to abide by a limitation on the total amount of campaign contributions received and expenditures made for election purposes. The nominees for governor of each political party as defined in section 17-12.1-12 and independent candidates for that office who meet the requirements set forth in section 17-25-20(6) shall be eligible to receive one dollar (\$1.00) of public funds for each qualified dollar of private funds contributed up to a limit of seven hundred fifty thousand dollars (\$750,000) in matching funds for a total of one million five hundred thousand dollars (\$1,500,000). In order to be eligible for matching public funds, each candidate at the time he or she becomes a candidate as defined in section 17-25-3(a), must sign a statement under oath pledging to comply with the limitations on campaign contributions and expenditures and with all of the terms and conditions set forth herein. Any candidate who fails to file the statement with his or her declaration for office shall be ineligible to receive public funds.

17-25-20. Eligibility criteria for matching public funds. - In order to receive matching public funds under section 17-25-19 a qualifying candidate must comply with the following requirements:

(1) The candidate must sign a statement under oath, as provided for in the preceding section, pledging to comply with the limitations on contributions and expenditures for election purposes and with all the terms and conditions set forth herein. Upon the filing of the statement, a candidate for general office shall be bound to abide by the limitations on contributions and expenditures set forth in this chapter and may not withdraw from his or her obligation to abide by said restrictions.

(2) No participating candidate for governor shall either receive or expend for election purposes more than a total of public and private funds in the sum of one million five hundred thousand dollars (\$1,500,000) in an election cycle.

The aforementioned limitations on contributions received from private sources, matching funds available from the state and total permitted expenditures shall apply in the 1990 general election and shall increase by ten percent (10%) in each succeeding general election.

(3) Only the first one thousand dollars (\$1,000) of the aggregate private monetary contributions from a single private source within an election cycle shall be eligible for matching public funds; provided

however the entire amount contributed shall be considered toward the dollar limits provided for in subsection 17-25-20(2) herein.

Any private funds lawfully contributed subsequent to December 31, 1988 shall be eligible for matching public funds subject to the conditions of this subsection.

(4) The direct costs incurred in connection with raising campaign funds on behalf of a candidate shall not be deemed to be expenditures for the purposes of the limitations on expenditures set forth in subsection 17-25-20(2). Direct costs shall include costs of printing and mailing invitations to fundraising events, solicitations for contributions, costs of hosting fundraising events, and travel to those events, but shall not include any portion of the salary or wages of campaign employees, nor the cost of any radio, television or print advertisement. The cost of a fundraising event must be less than the amount of money realized from the gross proceeds generated by the fundraising event in order to qualify for this exclusion.

(5) If a candidate who has accepted public funds makes expenditures in excess of the permitted amounts, the candidate shall be liable for a civil assessment payable to the state in an amount equal to three (3) times the amount of excess funds expended. In addition, the candidate shall be ineligible for further participation in the public financing program during the same election cycle.

(6) In order to receive payments under this section, any independent candidate shall first meet the following additional minimum requirements:

(a) raise an amount in qualified private contributions equal to twenty percent (20%) of the total amount eligible to be matched for election as governor;

(b) receive private contributions from a minimum of two hundred fifty (250) individuals contributing at least twenty-five dollars (\$25.00) each; and

(c) comply with any and all applicable nomination provisions in this title of the general laws and qualify for the general election ballot pursuant to the process set forth in said title.

(7) No public funds received by any candidate pursuant to sections 17-25-19 through 17-25-27 of this chapter and no private funds used to qualify for said public funds shall be expended by said candidate for any purpose except to pay reasonable and necessary expenses directly related to the candidate's campaign.

(8) No public funds shall be expended by the candidate except for one or more of the following uses directly related to the campaign of the candidate:

(a) purchase of time on radio or television stations;

(b) purchase of rental space on outdoor signs or billboards;

(c) purchase of advertising space in newspapers and regularly published magazines and periodicals;

(d) payment of the cost of producing the material aired or displayed on radio, television, outdoor signs or billboards, and in newspapers, regularly published magazines and periodicals;

(e) payment of the cost of printing and mailing campaign literature and brochures;

(f) purchase of signs, bumper stickers, campaign buttons and other campaign paraphernalia;

(g) payment of the cost of legal and accounting expenses incurred in complying with the public financing law and regulations as required by this chapter;

(h) payment of the cost of telephone deposits, installation charges and monthly billings in excess of deposits;

(i) payment of the costs of public opinion polls and surveys; and

(j) payment of rent, utilities and associated expenses connected with the operation of an election headquarters or satellite election offices.

(9) Contributions received and expended by any candidate for the purpose of defraying any expense or satisfying any loan obligations incurred prior to January 1, 1989 by the candidate in

furtherance of his or her candidacy in any election held prior to that date shall not be counted toward any contribution or expenditure limitation in sections 17-25-18 through 17-25-27.

17-25-21. Primary elections. - Any candidate eligible to receive public funds and electing to receive these funds who is challenged for nomination for governor in a political party primary shall be permitted to raise and expend an additional amount of private funds equal to one third (1/3) of the maximum allowable expenditure amount for the office or equal to the total amount spent by the candidates' opponent or opponents in the primary, whichever amount is less. The additional amount received in contributions must be expended prior to the primary election. The additional private contributions shall not be eligible for matching public funds.

17-25-22. Time period for payment of public funds. - No public funds shall be dispersed to candidates until after the date of the primary election. In order to receive matching public funds the candidate must be the nominee for governor of a political party as defined in section 17-12.1-12 or an independent candidate for governor who meets all of the requirements set forth in section 17-25-20(6). The candidate must submit to the board of elections proof of receipt of qualifying private contributions and supporting documentation as required by the board. The board of elections shall within five (5) days of the receipt of the request for payment of matching funds either pay over funds to the candidate or disallow all or a portion of the request and state in writing the reasons therefor.

A candidate may submit supplemental applications for public funds until such time as the limits permitted are reached.

17-25-23. Funds expended by person, committee of a political party or political action committee. - Private expenditure. - For the purposes of sections 17-25-19 and 17-25-20 any funds expended by a person, committee of a political party or political action committee to directly influence the outcome of the electoral contest involving the candidate shall be considered a contribution received by or an expenditure made by the candidate for governor if one or more of the following relationships between the candidate and the person, committee of a political party or political action committee is present:

(A) there is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person making the expenditure;

(B) in the same election cycle, the person making the expenditure (including any officer, director, employee or agent of such person) is or has been authorized to raise or expend funds on behalf of the candidate or the candidate's authorized committees; or is or has been an officer of the candidate's authorized committees, or is or has been receiving any form of compensation or reimbursement from the candidate, the candidate's authorized committees, or the candidate's agent;

(C) the person making the expenditure (including any officer, director, employee or agent of such person) has communicated with, advised or counseled the candidate or the candidate's agent at any time on the candidate's plans, projects or needs relating to the candidate's pursuit of election as governor in the same election cycle, including any advice relating to the candidate's decision to seek election as governor;

(D) the person making the expenditure retains the professional services of any individual or other person also providing those services to the candidate in connection with the candidate's pursuit of election as governor in the same election cycle, including any services relating to the candidate's decision to seek election as governor.

(E) the person making the expenditure (including any officer, director, employer or agent of such person) has communicated or consulted at any time during the same election cycle about the candidate's

plans, projects or needs relating to the candidate's pursuit of election as governor, with : (i) any officer, director, employee or agent of a party committee that has made or intends to make expenditures or contributions, in connection with the candidate's campaign; or (ii) any person whose professional services have been retained by a political party committee that has made or intends to make expenditures or contributions;

(F) the expenditure is based on information provided to the person making the expenditure directly or indirectly by the candidate or the candidate's agents about the candidate's plans, projects or needs, provided that the candidate or the candidate's agents are aware that the other person has made or is planning to make expenditures expressly advocating the candidate's election, or

(G) the expenditure is made by a person with the intention of seeking or obtaining any governmental benefit or consideration from the candidate by reason of the expenditure.

17-25-24. Additional expenditures. - Any candidate eligible to receive public funds and electing to receive these funds whose opponent does not elect to receive public funds shall be permitted to raise additional private contributions and make additional expenditures for election purposes in an amount in excess of the candidate's maximum allowable expenditure limit equal to the amount by which the expenditures of the opponent exceed the maximum allowable expenditure limit that would have applied to the opponent's expenditures had the opponent elected to receive public funds.

17-25-25. Surplus campaign funds. - Any candidate receiving public funds during any election cycle under the provisions of this chapter shall, within ninety (90) days after the completion of the election cycle, transfer to the general treasurer for deposit in the general fund fifty percent (50%) of any amount of the candidate's total campaign funds unexpended as of the last day of the election cycle. The candidate may convert the remaining fifty percent (50%) of the amount to use for any political purposes not otherwise prohibited by law. The remaining fifty percent (50%) of that amount may not be converted to personal use by the candidate.

17-25-26. Equal apportionment of expenditures for joint advertisements. - Any expenditure jointly made by any two (2) or more candidates for any newspaper, radio or television advertisement primarily benefiting the candidate shall be attributed to an apportioned equally among those candidates who are clearly identified in that advertisement. The apportionments shall constitute campaign expenditures subject to all reporting requirements of this chapter and shall be counted toward any total campaign expenditures limit that may apply to each or any of the candidates.

17-25-27. Postaudit of accounts - Publication. - The board may conduct a postaudit of all accounts and transactions for any election cycle and may conduct such other special audits and postaudits as it may deem necessary. The board shall publish a summary of the reports filed by candidates for governor pursuant to the public financing provision of this chapter on or before April 1 of the year following any year in which elections are held for statewide elective office.

17-25-28. Board of elections. - Regulation and auditing of matching fund program. - In addition to all other powers and duties established by law, the board of elections is hereby empowered to adopt and enforce rules, regulations and auditing procedures required to fulfill the mandates of sections 17-25-19 through 17-25-27.

The board is empowered among other things to:

(1) Ascertain whether any contributions to or expenditures for candidates for governor have exceeded limits prescribed by sections 17-25-18 through 17-25-27. Ascertain the amount and source of

contributions received and expenditures made by all candidates for governor whether or not said candidate chose to participate in public financing.

(2) Issue advisory opinions upon its own initiative or upon application of any candidate.

(3) Conduct investigations and/or hearings relative to alleged violations of sections 17-25-18 through 17-25-27 either on its own initiative or upon receipt of a verified written complaint, which complaint shall, under pain and penalty of perjury, be based upon actual knowledge and not merely on information and belief.

Upon receipt of such a complaint or upon receipt of evidence which is deemed sufficient by the board, the board may initiate a preliminary investigation into any alleged violation of sections 17-25-18 through 17-25-27. All board proceedings and records relating to a preliminary investigation shall be confidential, except that the board may turn over to the attorney general evidence which may be used in a criminal proceeding. The board shall notify any person who is the subject of the preliminary investigation of the existence of such investigation and the general nature of the alleged violation by certified or registered mail, return receipt requested, within seven (7) days of the commencement of the investigation.

If a preliminary investigation fails to indicate reasonable cause for belief that sections 17-25-18 through 17-25-27 has been violated, the board shall immediately terminate the investigation and so notify, in writing, the complainant, if any, and the person who had been the subject of the investigation.

If a preliminary investigation indicates reasonable cause for belief that sections 17-25-18 through 17-25-27 have been violated, the board may, upon a majority vote, initiate a full investigation and appropriate proceedings to determine whether there has been such a violation.

All testimony in board proceedings shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing board proceedings. All witnesses shall be entitled to be represented by counsel.

Any person whose name is mentioned during a proceeding of the board and who may be adversely affected thereby may appear personally before the board on his or her own behalf or file a written statement for incorporation into the record of the proceeding.

Within fourteen (14) days after the end of the proceedings, the board shall meet in executive session for the purpose of reviewing the evidence before it. Within thirty (30) days after completion of deliberations, the board shall publish a written report of its findings and conclusions.

Upon a finding that there has been a violation of sections 17-25-18 through 17-25-27 or any other campaign finance law, the board may issue an order requiring the violator to (a) cease and desist from such violation, (b) file any report, statements or other information as required by this chapter, and/or (c) pay a civil fine for each violation of any section of this chapter in an amount authorized by such section or, if no such authorization exists, in an amount not to exceed the greater of one thousand dollars (\$1,000) or three (3) times the amount the violator failed to report properly or unlawfully contributed, expended, gave or received. The board may turn over to the attorney general any evidence which may be used in a subsequent criminal proceeding against any violator.

The board may file a civil action in superior court to enforce an order issued by it pursuant to this section.

Any final action by the board made pursuant to this chapter shall be subject to review in superior court upon petition of any interested person filed within thirty (30) days after the action for which review is sought. The court shall enter a judgment enforcing, modifying or setting aside the order of the board or it may remand the proceeding to the board for such further action as the court may decide.

17-25-29. Appropriations. — In the event the funds generated by the tax credit of section 44-30-2(e) fail to produce sufficient money to meet the requirements of the public financing of the electoral system as set forth in sections 17-25-19 through 17-25-27, then funds sufficient to meet the levels of the public financing as set forth herein shall be supplied from the general fund of the state treasury. There is hereby appropriated from the general treasury such sums as may be necessary for carrying out the purposes of the public financing of the electoral system and an amount equal to the total of all maximum amounts of matching public funds available to all party and independent candidates for governor qualifying to receive and electing to receive public funds in an election shall be transferred to the board of elections no later than September 1 of each election year and deposited in such a manner as will secure the highest rate of interest available consistent with the safety of such sums and with the requirement that all sums on deposit be available for immediate payment to eligible candidates at any time after the date of the primary election. The state controller is hereby authorized and directed to draw his or her orders upon the general treasurer for transfer of all sums the board deems necessary to comply with this section. There shall also be transferred to the board any additional sums as may be required until such time as the limits permitted are reached. The board shall account for all funds disbursed pursuant to this chapter and transfer upon the conclusion of any election for governor any and all undisbursed sums to the general treasurer for deposit in the general fund by December 1 in any year in which election for governor is held.

(Note: All amendments up to and including those adopted in the 1989 Session of the General Assembly are included in this copy.)